

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

THE ESTATE OF MICHAEL )  
SCHWARTZ, and BRENDA )  
FISCHER, )  
Plaintiffs, )  
v. ) Cause No. 4:16-cv-00673-JMB  
ASSISTED RECOVERY CENTER ) DEFENDANT DEMANDS  
OF AMERICA, LLC, et al., ) TRIAL BY JURY  
Defendants. )

**PAUL N. SELVADURAI, M.D.'S MOTION TO STRIKE ALL EXHIBITS ATTACHED  
TO PLAINTIFFS' CONSOLIDATED MEMORANDUM OF LAW IN OPPOSITION TO  
ALL DEFENDANTS' MOTIONS TO DISMISS AND/OR SUMMARY JUDGMENT**

COMES NOW Paul N. Selvadurai, M.D. ("Dr. Selvadurai"), by and through his undersigned counsel, Kamykowski, Gavin & Smith, P.C., pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for his Motion to Strike all Exhibits Attached to Plaintiffs' Consolidated Memorandum of law in Opposition to all Defendants' Motions to Dismiss and/or Summary Judgment, states as follows:

1. Plaintiffs have improperly attached eighteen (18) new exhibits to their Consolidated Memorandum of law in Opposition to all Defendants' Motions to Dismiss and/or Summary Judgment ("Opposition"). Those exhibits, and all arguments stemming therefrom, should be stricken because Defendant did not convert his Motion to Dismiss into a motion for summary judgment.
2. Furthermore, Plaintiffs may not unilaterally convert Defendants' Motion to Dismiss into one for summary judgment. Only this Defendant may choose which procedural tool, i.e. motion to dismiss, he wishes to utilize.

3. Plaintiffs did not attach a single exhibit to their original Complaint or their First Amended Complaint, despite having extensively cited and quoted numerous documents therein to attempt to establish their claims against this Defendant.

4. Now, when faced with a properly pled Motion to Dismiss those claims based on the true nature and scope of those cited documents, Plaintiffs attached eighteen new exhibits to attempt to prevent dismissal of their claims. This is improper and, as such, Defendant's Motion to Strike should be granted.

5. Defendant incorporates herein by reference his Memorandum of Law in Support of this Motion to Strike which has been filed contemporaneously herewith.

Wherefore, Defendant Paul N. Selvadurai prays that the District Court grant his Motion to Strike all Exhibits Attached to Plaintiff's Consolidated Memorandum of law in Opposition to all Defendants' Motions to Dismiss and/or Summary Judgment and for such other relief as is just and proper.

Respectfully submitted,

KAMYKOWSKI, GAVIN & SMITH, P.C.

/s/ Michael C. Schroeder  
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*Attorneys for Defendant Paul N. Selvadurai, M.D.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the above and foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on counsel of record this 9th day of December, 2016.

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Michael C. Schroeder